

4. Thompson has sound reason to believe the individual buried in Crown Hill in Lot 94 Section 44 may have been misidentified as his uncle at the time of death and burial, and therefore seeks to disinter the remains in order to confirm his identity by forensic scientific examinations. To do so, and in compliance with Indiana's Disinterment Statute, IC 23-14-57-1 ("the Statute"), Thompson has obtained a duly signed Permit to Disinter, Remove, and Reinter

Human Remains (“the Permit”) from the Indiana State Department of Health, which Permit was issued on July 3, 2019, and is attached hereto as Exhibit A. Under the terms of the Permit, and based on what the funeral home director and Thompson believed at the time they submitted their Application for Disinterment was a reasonably sufficient period of time in which to complete the disinterment, the Permit includes a completion date of September 16, 2019. However, the Statute and the Rules set forth by the Department of Health do not include specific restrictions or deadlines during which the proposed disinterment must occur.

5. Thompson has no knowledge or opinion as to who might be buried in the Crown Hill grave at issue, in the event it is determined by expert forensic examination that it is not, in fact, his uncle. This unknown individual will be referred to hereinafter as “John Doe.”

6. Crown Hill has for several months worked in partnership with Thompson and his representatives, in order to manage the details of the disinterment and maintain confidentiality. However, in recent weeks Crown Hill has attempted to stall and then block the disinterment by offering shifting and disingenuous justifications for its newly revealed opposition to disinterment, including the following:

- a. Crown Hill initially agreed, by and through its counsel, that the Permit (Ex. A) is sufficient to disinter Thompson’s uncle under the Statute. However, in the event a forensic analysis concludes, post disinterment, that the body is not Thompson’s uncle, but is in fact a John Doe, Crown Hill asserted that the Permit will have been inadequate to protect Crown Hill against a future legal action by descendants of John Doe, if and when these unknown descendants learn that a disinterment was done without their written consent as required by IC 23-14-57-1(d). For that reason, in July Crown Hill advised Thompson, through counsel, to file an Application for Disinterment in the Marion County courts, in order to obtain a Court Order waiving

the statutory requirement for written consent as to John Doe, pursuant to subsection (d) of the Statute. Thompson, through counsel, attempted to reason with Crown Hill that this concern was legally and factually nonsensical. When Crown Hill would not yield on this point, Thompson agreed to file an Application with a Marion County Court, and Crown Hill advised it would provide a signed affidavit from the President of Crown Hill swearing that it did not oppose the Application for Waiver of Consent. Thereafter, Crown Hill first stalled, then reneged on its offer of an affidavit.

- b. After the Permit to Disinter was leaked to the media, Crown Hill changed its position, and now refuses to consent to disinterment in part because it asserts widespread media attention may be disruptive or unsettling to cemetery visitors.
- c. Crown Hill additionally now refuses to consent to disinterment in part because it asserts that the reported presence of concrete above the grave -- which has not been confirmed -- could disrupt or damage nearby graves during the process of disinterment. Crown Hill has been aware of this alleged concrete layer since 1934, and throughout its communications with Thompson's representatives, but raised this concern as a justification for refusing disinterment only after the media became aware of the project. To Thompson's knowledge, Crown Hill has made no effort to probe the ground or use other means to determine whether concrete was in fact placed over the grave. Even if concrete is present, equipment is available to lift the concrete off the grave during disinterment. Moreover, the Statute makes no exception to the consent process for situations where graves present logistical challenges to reaching the coffin.

d. Crown Hill additionally now refuses to consent to disinterment in part because it asserts that the FBI has publicly confirmed the identity of Thompson's uncle, implying that there is therefore no basis for disinterment. The FBI's assertion that identity has been properly established by fingerprint identification has been widely known (and disputed) since 1934, but Crown Hill has raised this as a justification for refusing to disinter only in recent days, after the media became aware of the project. Moreover, the Statute does not address a situation such as this one, where disinterment is done for the purpose of confirming identity, nor does it require family members to present evidence to the cemetery to prove that disinterment is justified to the satisfaction of the cemetery.

e. Crown Hill additionally now asserts that other next of kin oppose disinterment, which is based not on any formal objection, but was apparently gleaned from a recent media interview with a great nephew of the purported decedent. Crown Hill's new deference to the reported wishes of a single member of the next generation of kin is disingenuous. Thompson has obtained the Permit required by the Statute, and the Statute does not require unanimity among all family members reaching through all subsequent generations.

7. In refusing to give its consent to this disinterment, despite having been presented with a the duly authorized Department of Health Permit to Disinter, Crown Hill has in effect taken the position it has the unfettered right to refuse, or veto, a disinterment under the Statute.

8. Thompson and others in his family should not be prohibited from confirming the identity of their uncle merely because he is infamous. If identity is confirmed, Thompson and all other descendants of the deceased can put to rest their legitimate questions about identity. If identity is not confirmed, only then will Thompson and others have the necessary information to

investigate the true identity of the individual who was buried in his uncle's Crown Hill grave, as well as the true fate of Thompson's uncle.

9. Thompson comes to court with clean hands and with a genuine, good faith interest in confirming the identity of his ancestor. The right to disinter is within the province of equity, and disinterment is within the sound discretion of this court.

COUNT I OF I – DECLARATORY JUDGMENT

10. Pursuant to the Indiana Uniform Declaratory Judgment Act, IC 34-14-1-1, *et seq.*, and Rule 57 of the Indiana Rules of Trial Procedure, Thompson seeks a declaratory judgment in the form of an Order of this Court waiving the consent requirement of the Indiana Disinterment Statute as it relates to a John Doe, in the event a forensic analysis post-disinterment reveals that the decedent is not in fact Thompson's uncle.

11. Thompson further seeks an Order of this Court declaring that, within the province of equity, and within the discretion of this court, the purported remains of Thompson's uncle, located in Lot 94 Section 44, Crown Hill Cemetery, Indianapolis, Indiana, shall be disinterred on or before September 16, 2019, or within a reasonable time thereafter, and before the ground becomes frozen in late 2019.

12. Thompson further seeks an Order of this Court that Crown Hill refrain from interfering with the disinterment, and that it immediately resumes its cooperation and coordination with Thompson and his representatives in order to disinter the remains in question on or before September 16, 2019, or within a reasonable time thereafter, and before the ground becomes frozen in late 2019.

13. Thompson further seeks an Order of this Court that requires Crown Hill to allow Thompson to re-inter the body in the same grave in Crown Hill (Lot 94 Section 44) in the event it

is determined by forensic examination to be Thompson's uncle, at a date and time that is mutually convenient for the parties.

14. Thompson further seeks an Order of this Court that requires Crown Hill to re-inter the body in a new location of its choosing within the cemetery grounds, in the event it is determined by forensic examination to be a John Doe, until such time as descendants of John Doe are identified and make appropriate arrangements for re-burial in Crown Hill or elsewhere.

WHEREFORE, Thompson respectfully prays this Court enter an Order:

A) declaring that Crown Hill shall not interfere with the disinterment of the body purported to be Thompson's uncle, and shall cooperate in good faith with Thompson and his representatives to assure an orderly disinterment;

B) declaring that the body purported to be Thompson's uncle is to be disinterred from its grave in Crown Hill Cemetery on or before September 16, 2019, or within a reasonable time thereafter, before the ground becomes frozen in late 2019;

C) declaring that the body will be re-interred in the same grave in Crown Hill Cemetery in the event it is determined by forensic examinations to be Thompson's uncle, at a date and time that is mutually convenient for the parties;

D) declaring that the body will be re-interred in a grave of Crown Hill's choosing, in the event it is determined by forensic examination to be a John Doe, until such time as descendants of John Doe are identified and make appropriate arrangements for re-burial in Crown Hill or elsewhere;

E) declaring that due to the lack of authorization from the next of kin in the event the remains in question are determined to be John Doe, this Order shall be substituted for the written consent of next of kin for disinterment and re-interment purposes.

F) for all such further relief this Court deems proper.

Respectfully submitted,

Date: August 14, 2019

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